



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

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Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/765,605 01/22/01 POLEGATO MORETTI

M 202115US3

EXAMINER

QM12/1005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUST
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22202

STASHICK, A

ART UNIT

PAPER NUMBER

3728
DATE MAILED:

4
10/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/765,605

Applicant(s)

POLEGATO MORETTI, MARIO

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: on page 1, line 28, "thread" should be --tread--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 contains the phrases "similar material" and "or the like" which render the claim vague and indefinite. It is not clear what material would meet the requirements of "similar" or "or the like" as there is no basis to measure material against. In what ways do the material have to be similar? Claim 1 also contains the phrase "assembled hermetically" which renders the claim vague and indefinite. There is no support for this limitation in the description as originally filed, but the applicant is reminded that since the claims are part of the originally filed specification, support for this limitation can be added into the description. Claim 3 contains the phrase "or equivalent material". See comment on "similar material" above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polegato 5,983,524 in view of Margolin 2,347,207 and Sandmeyer 780,401. Polegato '524 discloses all the limitations substantially as claimed including the following: a tread 313 made of leather or similar material; tread is at least partially covered in an upward region by a membrane 315 made of material which is permeable to vapor and impermeable to water; the tread and membrane are sealed in a peripheral region (col. 5, lines 54-59); tread having through holes (see Figures 6 and 7); tread and membrane are peripherally sealed by peripheral upper band 315a; membrane and tread are equal in size and sealed perimetrically by adhesive (see Figures 5-7); a protective layer 316 is arranged at the upper outlets of the holes to protect the membrane; a vapor-permeable or perforated protective layer is arranged above the membrane 318; the sole is injection molded (see method of making, col. 6, lines 29-67). Polegato '524 does not teach of plastic material located in the holes of the tread, the inserts forming antislip and wear preventing protrusions underneath the tread, inserts formed with undercuts to prevent accidental removal and the inserts being injection molded with the sole. Margolin '207 teaches that it is desirable to have plastic bosses 35 placed within the aeration hole in the sole of a shoe to help in holding the hole open when weight is placed upon it. These bosses would form antislip projections, as shown in Figures 7 and 8, which would aid in gaining grip on the walking surface and prevent wear to the sole. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to place bosses, such as those shown in Margolin '207, in the holes in the sole of the shoe of Polegato '524, to aid in keeping the holes open when weight is placed upon them and to aid in better circulating air throughout the shoe sole. Sandmeyer '401 teaches that an air inlet or outlet port of a shoe sole can have inserts with undercuts (best seen in figures 2 and 3) that allow for the fitting of a complimentary portion to help hold the inserts in the shoe ventilation port to prevent accidental removal or displacement of the insert. Therefore, it would have been obvious to make the inserts in the references as modified above with undercuts, such as that shown in Sandmeyer '401, to help hold the

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inserts in the sole of the shoe and prevent accidental displacement of the insert. With respect to the inserts being injection molded with the sole, since the shoe sole is made by injection molding, it would have been obvious to injection mold the inserts in the sole during the injection molding process of making the sole of Polegato '524.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul T. Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Informal Fax for 3728	(703) 308-7769

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	http://www.uspto.gov/



Anthony D Stashick
Examiner
Art Unit 3728

ADS
September 29, 2001

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.